

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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THOMAS TODD,

Plaintiff,

-against-

EMPIRE STATE HIGHWAY  
CONTRACTORS ASSOCIATION, INC.

Defendant.

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**NOTICE OF REMOVAL**

(Supreme Court, County of  
St. Lawrence, Index No. 148744)

**PLEASE TAKE NOTICE** that defendant Empire State Highway Contractors Association, Inc. ("Defendant"), by and through its attorneys, McNamee, Lochner, Titus & Williams, P.C., hereby removes the above-captioned action to the United States District Court for the Northern District of New York, in accordance with 28 U.S.C. §§ 1441 and 1446.

**I. Procedural Background and Nature of the Action**

1. On or about October 31, 2016, the above-captioned action was commenced in the Supreme Court of the State of New York for the County of St. Lawrence, and, upon information and belief, is currently pending in that court (Index No. 148744). A true and correct copy of plaintiff Thomas Todd's ("Plaintiff") Summons and Complaint, constituting all pleadings, process and orders served upon Defendant in this action, is annexed hereto as Exhibit "A."

2. Plaintiff's Complaint alleges three causes of action, all arising out of an alleged denial of benefits under a retirement plan known as the Empire State Highway Contractors Association, Inc. Retirement Plan for the Employees of Employer (Lancaster Development, Inc.) ("Plan"). ~~Specifically, Plaintiff seeks specific performance under the Plan, and asserts claims for~~ breach of contract and breach of fiduciary duty.

3. Plaintiff alleges that he was a participant in the Plan, which is an employee benefit plan as defined by the Employment Retirement Income Security Act ("ERISA") § 502, 29 U.S.C. § 1132.

## **II. Grounds for Removal**

4. Since the dispute alleged in the Complaint involves benefits allegedly due to Plaintiff under the Plan, Plaintiff's Complaint relates to an employee benefit plan under 29 U.S.C. § 1144(a). As such, it is within the scope of 29 U.S.C. § 1132(a)(1)(B), and is therefore preempted by ERISA. See, Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 62-63 (1987); Aetna Health Inc. v. Davila, 542 U.S. 200, 209 (2004); Devlin v. Transportation Communs. Int'l Union, 173 F.3d 94, 101 (2d Cir. 1998). The basis for jurisdiction is federal question jurisdiction, pursuant to 28 U.S.C. § 1331. The action is therefore removable to this Court pursuant to 28 U.S.C. § 1441(a).

## **III. Procedural Matters**

5. Venue is proper in the United States District Court for the Northern District of New York as this District embraces the Supreme Court of the State of New York, St. Lawrence County, the place where the removed action is pending. 28 U.S.C. § 1441(a).

6. On or about November 4, 2016, Defendant was served with a copy of the Summons and Complaint through counsel. Therefore, Defendant's Notice of Removal is being timely filed within 30 days after receipt by of the Summons and Complaint, in accordance with 28 U.S.C. § 1441(b).

7. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be served promptly upon the Plaintiff and will be filed with the Clerk of the Court,

Supreme Court of the State of New York, St. Lawrence County. A copy of said Removal Notice (without exhibits) is annexed hereto as Exhibit "B."

WHEREFORE, Defendant hereby removes to this Court the state court action pending in the Supreme Court of the State of New York, St. Lawrence County, entitled *Thomas Todd v. Empire State Highway Contractors Association, Inc.* (Index No. 148744), and respectfully requests that this action proceed in this Court as an action properly removed to it.

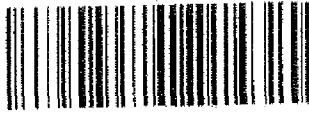
Dated: Albany, New York  
November 22, 2016

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.

BY: /s/ Glen P. Doherty  
Glen P. Doherty, Esq. (Bar Roll No. 501591)  
*Attorneys for Defendant*  
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Albany, New York 12207  
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TO: Lloyd G. Grandy, II, Esq.  
CARLISLE LAW FIRM, P.C.  
*Attorneys for Plaintiff*  
602 State Street, P.O. Box 757  
Ogdensburg, New York 13669  
Tele: 315-393-1111  
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## **Exhibit A**



CV-2016-0148744  
10/31/2016 01:28:01 PM

SUMMONS & COMPLAINT  
Mary Lou Rupp, St. Lawrence County Clerk

DUPLICATE  
ORIGINAL  
FILED

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ST. LAWRENCE

THOMAS TODD  
2505 County Route 10  
Depeyster, New York 13633

Plaintiff,

vs.

EMPIRE STATE HIGHWAY  
CONTRACTORS ASSOCIATION, INC.  
PO Box 955  
Oriskany, New York 13424,

Defendant.

SUMMONS

Index No.: 148744

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in the action and to serve a copy of your answer on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates St. Lawrence County as the place of trial.

The basis of venue is Plaintiff's residence.

Dated: October 5, 2016

CARLISLE LAW FIRM, P.C.  
Attorneys for the Plaintiff  
Office and Post Office Address  
602 State Street - PO Box 757  
Ogdensburg, New York 13669  
Tel. No.: (315) 393-1111

By:

  
Lloyd G. Grandy II, Esq.

TO: EMPIRE STATE HIGHWAY

CONTRACTORS ASSOCIATION, INC.  
PO Box 955  
Oriskany, New York 13424

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ST. LAWRENCE

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THOMAS TODD  
2505 County Route 10  
Depeyster, New York 13633

Plaintiff,

vs.

EMPIRE STATE HIGHWAY  
CONTRACTORS ASSOCIATION, INC.  
PO Box 955  
Oriskany, New York 13424,

Defendant.

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COMPLAINT  
Index No.:

Plaintiff, as and for a Complaint against Defendant, respectfully allege as follows:

1. At all times relevant to this action, Plaintiff resided in the Town of Depeyster, County of St. Lawrence, State of New York.
2. Upon information and belief and at all times relevant to this action, Empire State Highway Contractors Association, Inc., Defendant, maintains a primary office with an address of PO Box 955, Oriskany, County of Oneida, State of New York.
3. Plaintiff was a participant in the Empire State Highway Contractors Association, Inc. retirement plan (hereinafter "the plan.") by virtue of his employment at Lancaster Development Inc., Plaintiff's employment with Lancaster Development, Inc. began on July 19, 2010, as did his participation in the plan.
4. In September, 2015, plaintiff began receiving Social Security Disability Benefits as he had been deemed disabled in April, 2015.
5. In November, 2015, plaintiff requested a distribution from the plan according to the rules and policies of the plan. That request was denied.

AS AND FOR A FIRST CAUSE OF ACTION  
(Specific Performances)

6. Plaintiff repeats and re-alleges paragraphs "1" through "5" above as though fully set forth herein.

7. Plaintiff was an eligible employee of Lancaster Development, Inc., and a participant in the retirement plan administered by the Defendant.

8. That as a participant in the plan, he was entitled to certain benefits in exchange for meeting certain requirements.

9. That plaintiff has fully met his retirement to entitle him to certain benefits as outlined in the Bowman.

10. That defendant has the ability to perform pursuant to the plan having adequate funds to do so.

11. That there is no adequate remedy at law and plaintiff is therefore entitled to specific performance of this contract.

AS AND FOR A SECOND CAUSE OF ACTION  
(Breach of Contract)

12. Plaintiff repeats and re-alleges paragraphs "1" through "11" above as though fully set forth herein.

13. That a contract existed between plaintiff's employer and defendant of which plaintiff is a third-party beneficiary.

14. That plaintiff performed his obligation under the contract.

15. That defendant has refused to perform under the terms of the contract by refusing to disburse funds owed to plaintiff.

16. That plaintiff has been damaged in an amount exceeding the last known value of plaintiff's account which was \$92,879.04 as of December 31, 2014.



AS AND FOR A THIRD CAUSE OF ACTION  
(Breach of Fiduciary Duty)

17. Plaintiff repeats and re-alleges paragraphs "1" through "16" above as though fully set forth herein.

18. That there exists a fiduciary relationship between plaintiff and defendant whereby plaintiff was entrusted with receiving, accounting for, and distributing on money to the plaintiff.

19. That defendant has refused to turn over benefits to plaintiff pursuant to its duty as a fiduciary.

20. That plaintiff has been damaged by defendant's misconduct in failing to provide plaintiff with the money he is entitled to pursuant to their fiduciary relationship with him.

**WHEREFORE**, Plaintiff respectfully seeks judgment as follows:

1. On the First Cause of Action, specific performance of the contract whereby defendant release one-hundred percent (100%) of the current value of plaintiff's account to him;
2. On the Second Cause of Action, breach of contract, defendant shall pay to defendant the total current value of his account plus interest, costs and disbursements of this action, attorney's fees, and such other and further relief as the Court deems just and proper;
3. On the Third Cause of Action, breach of fiduciary duty, defendant shall pay to the defendant the total current value of his account, plus interest, costs and disbursements of this action, attorney's fees, and such other and further relief as the Court deems just and proper.

Dated: October 5, 2016

CARLISLE LAW FIRM, P.C.  
Attorneys for the Plaintiff  
Office and Post Office Address  
602 State Street / PO Box 757  
Ogdensburg, New York 13669  
Tel. No.: (315) 393-1111

By:   
Lloyd G. Grandy II, Esq.

TO: EMPIRE STATE HIGHWAY  
CONTRACTORS ASSOCIATION, INC.  
PO Box 955  
Oriskany, New York 13424

**MICHELLE L. AYOTTE**  
Notary Public, State of New York  
No. 01AY6329876  
Qualified in St. Lawrence County  
Commission Expires 8/31/2019

## **Exhibit B**

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ST. LAWRENCE

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THOMAS TODD,

Plaintiff,

**REMOVAL NOTICE**

-against-

EMPIRE STATE HIGHWAY  
CONTRACTORS ASSOCIATION, INC.

Index Number: 148744

Defendant.

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PLEASE TAKE NOTICE that a Notice of Removal in the above-captioned action, currently pending in the Supreme Court of St. Lawrence County, State of New York, was filed by the defendant Empire State Highway Contractors Association, Inc. in the United States District Court for the Northern District of New York;

PLEASE TAKE FURTHER NOTICE that defendant has filed the within with the Clerk of the Supreme Court of St. Lawrence County, State of New York. A copy of the Notice of Removal is attached to this Notice and is hereby served on you.

Dated: Albany, New York  
November 22, 2016

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.

BY: /s/ Glen P. Doherty  
Glen P. Doherty, Esq.  
*Attorneys for Defendant*  
677 Broadway  
Albany, New York 12207  
Tele: 518-447-3200

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TO: Lloyd G. Grandy, II, Esq.  
CARLISLE LAW FIRM, P.C.  
*Attorneys for Plaintiff*  
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